

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
AUG 19 2010
J. Gilman

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUSTIN LINDER,

Defendant.

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CR 10-30033-RAL

RECOMMENDATION FOR
DISPOSITION OF
DEFENDANT'S MOTION
TO SUPPRESS

Defendant, Justin Linder, has filed a Motion to Suppress Evidence and Statements, Docket No. 14. Because Defendant's Motion is a dispositive one, this Court is only authorized to determine the same on a Report and Recommendation basis. See 28 U.S.C. § 636(b)(1). Based on the findings, authorities and legal discussion made on the record at the August 19, 2010 hearing, the Court hereby

RECOMMENDS that Defendant's Motion be granted in part and denied in part. The Motion should be granted to the extent that it seeks to suppress, as substantive evidence, Defendant's November 28, 2009 unMirandized statements to Trooper Michael Peterson that Peterson would find more dope in Defendant's vehicle, that the dope was "white" and that it would be found in the center console. The Motion should also be granted in so far as it seeks to suppress Defendant's statements to Special Agent Dane Rasmussen and other officers on December 1, 2009. In other respects, the Motion, including the use of the November 28 statements just mentioned for impeachment purposes in the event Defendant testifies, should be denied.

Dated this 19th day of August, 2010, at Pierre, South Dakota.

BY THE COURT:

/s/ *Mark A. Moreno*

**MARK A. MORENO
UNITED STATES MAGISTRATE JUDGE**

NOTICE

Failure to file written objections to the within and foregoing Report and Recommendation for disposition of Defendant's Motion to Suppress Evidence and Statements by August 27, 2010 shall bar an aggrieved party from attacking the Report and Recommendation before the assigned United States District Judge. See 28 U.S.C. § 636(b)(1).